

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-26

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF REVENUE
DIVISION OF TAXATION
ONE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908**

IN THE MATTER OF:

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**Case No.: 10-T-0010
Sales and Use**

Taxpayer.

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to Notice of Hearing and Appointment of Hearing Officer (“Notice”) issued on June 4, 2010 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to the Taxpayer’s request for hearing. Prior to hearing, the parties met informally in order to resolve this matter. A hearing was scheduled for October 2, 2014 at which time the Taxpayer did not appear. The Taxpayer had adequate notice of the hearing since the notice of the October 2, 2014 hearing was forwarded by first class and certified mail to counsel of record and to the Taxpayer.¹ As the Taxpayer chose not to appear at hearing, the undersigned held the hearing. The Division was represented by counsel and rested on record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*, and the *Division of Legal Services*

¹ The notices to the Taxpayer were returned by the United State Post Office as “unable to forward” and the notices sent to counsel of record were received as the receipt requested was signed and returned and the first class mail was not returned.

Regulation 1 – Rules of Procedure for Administrative Hearings, and the Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01.

III. ISSUE

Whether the Taxpayer owes the sales tax, interest, and penalties assessed by the Division.

IV. MATERIAL FACTS AND TESTIMONY

Senior Revenue Agent testified on behalf of the Division. He testified that he was the auditor for this audit and the audit period was from January 1, 2003 until October 31, 2009. He testified that the Taxpayer was located in Connecticut and never registered in Rhode Island to do business and had no personal place of business in Rhode Island and no sales permit in Rhode Island. He testified that during the audit period, the Taxpayer delivered precast sewer system parts in Rhode Island using its own vehicles. He testified that he reviewed sales invoices, the general ledger, and Federal corporate partnership returns for the audit period. See Division's Exhibits Four (4) to Eight (8) (2003, 2004, 2005, 2006, 2007 partnership returns). He testified that during the audit, the Taxpayer did start to collect sales tax and remit it to the Division so the Taxpayer was given credit for those taxes collected. He testified that the Taxpayer did not collect any sales tax in Connecticut. He testified that the Taxpayer was a non-resident retailer subject to tax because he was selling personal property in Rhode Island and delivering it in its own vehicle instead of a common carrier. See *Sales and Use Tax Regulation 90-20 Out of State Retailers*. He testified that that using the 2007 invoices, he found a taxable measure to apply to the corporate returns. See Division's Exhibits Nine (9) (summary of differences); Ten (10) (schedule 1 – additional taxable sales); 11 (schedule A – 1/1/03 through 8/18/08 - no taxes collected); 12 (schedule B – 8/19/08 through 7/31/09 - taxes collected, remitted late); 13 (schedule C – sales 8/1/09 through 10/31/09 sales collected, remitted late); 14

(schedule D – 2007 sales invoices); 15 (Taxpayer information re: 2007 sales); 16 (closing letter dated March 4, 2010); 17 (summary of tax, interest, penalty for all three (3) periods). He testified that the Notice of Deficiency was issued on March 25, 2010 and was reduced by the credit given for tax collected. See Division’s Exhibit 18 (Notice of Deficiency).

V. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (internal citation omitted). In cases where a statute may contain ambiguous language, the Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Relevant Statutes and Regulation

Sales price is defined by R.I. Gen. Laws § 44-18-12. R.I. Gen. Laws § 44-18-18 imposes a 7% sales tax upon sales at retail. R.I. Gen. Laws § 44-18-19 requires that retailers collect sales tax. Pursuant to R.I. Gen. Laws § 44-19-10, taxes that are due and payable by taxpayers that hold permits to make sales at retail are to be paid every month.

C. Whether the Taxpayer Owe Sales Tax

Pursuant to R.I. Gen. Laws § 44-18-25,² the Taxpayer had the burden to demonstrate that it did not owe the assessed tax. The Division's evidence regarding the Taxpayer's sales in Rhode Island and the taxes owed on such sales was undisputed.

Therefore, the Division properly assessed the Taxpayer the sales tax it owed. See Division's Exhibit 18 (Notice of Deficiency). The Division imposed interest on the assessment pursuant to R.I. Gen. Laws § 44-19-11.³ See Division's Exhibit 17 (interest calculation). In addition, the Division properly imposed a 10% penalty on said deficiency pursuant to R.I. Gen. Laws § 44-19-12.⁴ The statute clearly provides that if a taxpayer does not pay a tax because of negligence or does not pay, a 10% penalty is imposed. See *Brier Mfg. Co. v. Norberg*, 377 A.2d 345 (R.I. 1977).

² R.I. Gen. Laws § 44-18-25 provides as follows:

Presumption that sale is for storage, use, or consumption – Resale certificate. – It is presumed that all gross receipts are subject to the sales tax, and that the use of all tangible personal property is subject to the use tax, and that all tangible personal property sold or in processing or intended for delivery or delivered in this state is sold or delivered for storage, use, or other consumption in this state, until the contrary is established to the satisfaction of the tax administrator. The burden of proving the contrary is upon the person who makes the sale and the purchaser, unless the person who makes the sale takes from the purchaser a certificate to the effect that the purchase was for resale. The certificate shall contain any information and be in the form that the tax administrator may require.

³ R.I. Gen. Laws § 44-19-11 states in part as follows:

Deficiency determinations – Interest. – If the tax administrator is not satisfied with the return or returns or the amount of tax paid to the tax administrator by any person, the administrator may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one or for more than one month. The amount of the determination, exclusive of penalties, bears interest at the annual rate provided by § 44-1-7 from the fifteenth day (15th) after the close of the month for which the amount, or any portion of it, should have been paid until the date of payment.

⁴ R.I. Gen. Laws § 44-19-12 states as follows:

Pecuniary penalties for deficiencies. – If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of the provisions of this chapter and chapter 18 of this title, a penalty of ten percent (10%) of the amount of the determination is added to it. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade the provisions of this chapter or chapter 18 of this title, a penalty of fifty percent (50%) of the amount of the determination is added to it.

VI. FINDINGS OF FACT

1. The Notice was issued on June 4, 2010 to the Taxpayer in response to the Taxpayer's request for hearing.
2. The hearing was held on October 2, 2014 with the Division resting on the record.
3. The Taxpayer was adequately notified of the hearing date and did not appear.
4. A field audit was conducted by the Division on the Taxpayer for the period of January 1, 2003 through October 31, 2009.
5. The Taxpayer did not make a showing that it did not owe the assessed tax and the Division properly assessed the Taxpayer the taxes and interest and penalties owed as set forth in the Notice of Deficiency admitted as Division's Exhibit 18.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:


1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-18-1 *et seq.*, and R.I. Gen. Laws § 44-19-1 *et seq.*
2. Pursuant to R.I. Gen. Laws § 44-18-18, the Taxpayer owes the assessed sales tax. Pursuant to R.I. Gen. Laws § 44-19-11 and R.I. Gen. Laws § 44-19-12, the Taxpayer owes the interest and penalties assessed on the deficiencies.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows:

Pursuant to R.I. Gen. Laws § 44-18-18, the Taxpayer owes the assessed sales tax and pursuant to R.I. Gen. Laws § 44-19-11 and R.I. Gen. Laws § 44-19-12, the Taxpayer owes the interest and penalties assessed in the deficiency as set forth in the Notice of Deficiency. See Division's Exhibit 18.

Date: 10/27/14



Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

 ✓ ADOPT
 REJECT
 MODIFY

Dated: 10/31/2014


David Sullivan
Tax Administrator

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:

R.I. Gen. Laws § 44-19-18 Appeals

Appeals from administrative orders or decisions made pursuant to any provisions of this chapter are to the sixth (6th) division district court pursuant to chapter 8 of title 8. The taxpayer's right to appeal under this chapter is expressly made conditional upon prepayment of all taxes, interest, and penalties, unless the taxpayer moves for and is granted an exemption from the prepayment requirement pursuant to § 8-8-26.

CERTIFICATION

I hereby certify that on the 31st day of October, 2014 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail, return receipt requested to the Taxpayer's address and Taxpayer's attorney's address and by hand delivery to Meaghan Kelly, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

